



RULE-MAKING ORDER

CR-103 (June 2004)
(Implements RCW 34.05.360)

Agency: Department of Social and Health Services, Aging and Disability Services Administration

☐ Permanent Rule
☒ Emergency Rule

Effective date of rule:

Permanent Rules

- ☐ 31 days after filing.
☐ Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

Emergency Rules

- ☒ Immediately upon filing.
☐ Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

Purpose: New WAC 388-106-1315 clarifies a long-term care client's right to an administrative hearing:

- If their in-home personal care hours approved as an exception to rule are reduced or terminated; or
- If their increased residential payment rate approved as an exception to rule is reduced or terminated.

Citation of existing rules affected by this order:

Repealed: None
Amended: None
Suspended: None

Statutory authority for adoption: RCW 74.08.090, Chapter 74.39 RCW, Chapter 74.39A RCW

Other authority :

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR _____ on _____ (date)

Describe any changes other than editing from proposed to adopted version:

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ Address: _____ phone () fax () e-mail _____

**ADOPTION
PERMANENT
EMERGENCY**

EFFECTIVE DATE:

9/19/06

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- ☐ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- ☒ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: The due process clause of the fourteenth amendment to the U.S. Constitution and federal statutory and regulatory requirements [42 USC 1396(a)(3) and 42 CFR 431.200, et seq.] necessitate that opportunity for a fair hearing be afforded in the situations identified in the proposed rule. The Department is currently out of compliance with these requirements of federal law. The proposed rule is necessary to bring the Department into compliance with federal law. Because the Department is out of compliance with requirements of federal law and the rule will bring the Department into compliance, immediate adoption is necessary. This filing continues the emergency rule filed as WSR 06-11-151 while the department completes adoption of permanent rules initiated under WSR 06-11-084. DSHS is planning on filing a CR-102 on this WAC by October.

Date adopted:

9/19/06

NAME (TYPE OR PRINT)

Andy Fernando

SIGNATURE

TITLE

Manager, Rules and Policies Assistance Unit

CODE REVISER USE ONLY

CLERK OF SUPERIOR COURT
STATE OF WASHINGTON
FILED
SEP 9
1224
06-19-085
AM

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	<u>1</u>	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
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The number of sections adopted in the agency's own initiative:

New	___	Amended	___	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	___	Repealed	___
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	<u>1</u>	Amended	___	Repealed	___

NEW SECTION

WAC 388-106-1315 Do I have a right to an administrative hearing if my in-home personal care hours approved as an exception to rule are reduced or terminated or if my increased residential payment rate approved as an exception to rule is reduced or terminated? Notwithstanding WAC 388-440-0001(3), you have a right to an administrative hearing regarding the department's exception to rule decision if:

(1) You receive services in your own home, and:

(a) The total number of in-home personal care hours you are currently receiving includes in-home personal care hours approved as an exception to rule in addition to the number of in-home care hours determined to be available to you by CARE; and

(b) The total number of in-home personal care hours you are currently receiving is reduced because of a reduction or termination in the number of in-home personal care hours approved as an exception to rule.

(2) You receive services in a residential facility, and:

(a) The total residential payment rate you are currently receiving includes a rate approved as an exception to rule in addition to the residential payment rate assigned to the classification group in which CARE has placed you; and

(b) The total residential payment rate you are currently receiving is reduced because of a reduction or termination in the rate approved as an exception to rule.